

<b>Interview Summary</b>	Application No. <b>08/981,087</b>	Applicant(s) <b>Elmore et al</b>
	Examiner <b>Sharon L. Turner, Ph.D.</b>	Group Art Unit <b>1647</b>



All participants (applicant, applicant's representative, PTO personnel):

(1) Sharon L. Turner, Ph.D. (3) \_\_\_\_\_  
 (2) BJ Sadoff (4) \_\_\_\_\_

Date of Interview 10-30-01

Type: a) Telephonic b) Video Conference  
 c) Personal [copy is given to 1) applicant 2) applicant's representative]

Exhibit shown or demonstration conducted: d) Yes e) No. If yes, brief description:

Claim(s) discussed: \_\_\_\_\_

Identification of prior art discussed:  
\_\_\_\_\_  
\_\_\_\_\_

Agreement with respect to the claims f) was reached. g) was not reached. h) N/A.

Substance of Interview including description of the general nature of what was agreed to if an agreement was reached, or any other comments:

The proposed after final amendment submitted 10-5-01 has been received and is under review.

(A fuller description, if necessary, and a copy of the amendments which the examiner agreed would render the claims allowable, if available, must be attached. Also, where no copy of the amendments that would render the claims allowable is available, a summary thereof must be attached.)

i) It is not necessary for applicant to provide a separate record of the substance of the interview (if box is checked).

Unless the paragraph above has been checked, THE FORMAL WRITTEN REPLY TO THE LAST OFFICE ACTION MUST INCLUDE THE SUBSTANCE OF THE INTERVIEW. (See MPEP section 713.04). If a reply to the last Office action has already been filed, APPLICANT IS GIVEN ONE MONTH FROM THIS INTERVIEW DATE TO FILE A STATEMENT OF THE SUBSTANCE OF THE INTERVIEW. See Summary of Record of Interview requirements on reverse side or on attached

Examiner Note: You must sign this form unless it is an Attachment to a signed Office action.

25. Petitions under 37 CFR 1.181 to review a determination of the length of the patent term extension under 37 CFR 1.701.

26. Petitions to convert a nonprovisional application filed under 37 CFR 1.53(b) to a provisional application under 37 CFR 1.53(c) where the nonprovisional application is before the Office of Petitions or the Special Program Law Office.

27. Petitions for extensions of time under 37 CFR 1.136(b) in applications before the Office of Petitions or the Special Program Law Office.

> 28. Petitions, or requests at the initiative of the PTO by someone other than a Group Director, to withdraw patent applications from issue after payment of the issue fee under 37 CFR 1.313(b), MPEP § 1308.<

#### **1002.02(c) [R-1] Petitions and Requests Decided by the Group Directors**

1. Petitions or requests to reopen prosecution of patent applications after decision by the Board of Patent Appeals and Interferences under 37 CFR 1.198, where no court action has been filed, MPEP § 1214.04 and § 1214.07.

2. Petitions from a final decision of examiner requiring restriction in patent applications, 37 CFR 1.144, MPEP § 818.03(c), or holding lack of unity of invention in an international application.

3. Petitions invoking the supervisory authority of the Commissioner under 37 CFR 1.181 involving any *ex parte* action or requirement in a patent application by the examiner which is not subject to appeal (37 CFR 1.191) and not otherwise provided for, as for example:

- (a) prematurity of final rejection, MPEP § 706.07(c);
- (b) refusal to enter an amendment, 37 CFR 1.127, MPEP § 714.19;
- (c) holding of abandonment, MPEP § 711.03(c);
- (d) requirement to cancel "new matter" from specification, MPEP § 608.04(c);
- (e) relative to formal sufficiency and propriety of affidavits under 37 CFR 1.131 (MPEP § 715.08), 1.132 (MPEP § 716) and 1.608, MPEP § 2308 - § 2308.02;
- (f) refusal to initiate an interference under 37 CFR 1.601(i), MPEP § 2306;
- (g) refusal to enter an amendment under 37 CFR 1.312, MPEP § 714.16(d);
- (h) resetting period for reply, MPEP § 710.06.

4. Petitions under 37 CFR 1.113 relating to objections or requirements made by the examiners.

5. Petitions for return of original oaths of patent applications, MPEP § 604.04(a).

6. Requests for extensions of a set shortened statutory period under 37 CFR 1.136(b) in applications pending in the examining group, MPEP § 710.02(e).

7. Petitions under 37 CFR 1.193(a) relating to the form of the appeal.

8. Petitions concerning appealed patent applications before transfer of jurisdiction to the Board of Patent Appeals and Interferences (e.g., extension of time under 37 CFR 1.136(b) for filing an appeal brief), MPEP § 1206.

9. Request by applicant for a second or subsequent suspension of action in patent applications under 37 CFR 1.103, MPEP § 709.

10. Petitions from refusal to issue a Certificate of Correction for a patent not involved in an interference, 37 CFR 1.181, MPEP § 1480 - § 1485.

11. Petitions to reinstate appeals dismissed in the group.

12. Petitions from the denial of a request for reexamination, 37 CFR 1.515, MPEP § 2248.

13. Requests for extension of time in reexamination proceedings pending in the examining group, 37 CFR 1.550 (c).

14. Petitions under 37 CFR 1.129(b)(2) traversing a restriction requirement made in an application which is subject to the transitional restriction provisions, MPEP § 803.03.

15. Petitions to convert a nonprovisional application filed under 37 CFR 1.53(b) to a provisional application under 37 CFR 1.53(c) where the nonprovisional application is before the Examining Group.

16. Requests for interviews with examiner after a patent application has been sent to

37 CFR 1.181(g) states, "The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions."

The various delegations to various Office officials are set forth in this Chapter.

The delegations set forth in this Chapter do not confer a right to have a matter decided by a specific Office official, rather, such delegations aid in the efficient treatment of petitions by the Office. A delegation of supervisory or higher level review authority over a matter carries with it the authority to decide the matter *ab initio*.

## 1002 Petitions to the Commissioner

### 37 CFR 1.181. Petition to the Commissioner.

(a) Petition may be taken to the Commissioner: (1) from any action or requirement of any examiner in the *ex parte* prosecution of an application which is not subject to appeal to the Board of Patent Appeals and Interferences or to the court; (2) in cases in which a statute or the rules specify that the matter is to be determined directly by or reviewed by the Commissioner; and (3) to invoke the supervisory authority of the Commissioner in appropriate circumstances. For petitions in interferences, see § 1.644.

(b) Any such petition must contain a statement of the facts involved and the point or points to be reviewed and the action requested. Briefs or memoranda, if any, in support thereof should accompany or be embodied in the petition; and where facts are to be proven, the proof in the form of affidavits or declarations (and exhibits, if any) must accompany the petition.

(c) When a petition is taken from an action or requirement of an examiner in the *ex parte* prosecution of an application, it may be required that there have been a proper request for reconsideration (§ 1.111) and a repeated action by the examiner. The examiner may be directed by the Commissioner to furnish a written statement, within a specified time, setting forth the reasons for his decision upon the matters averred in the petition, supplying a copy thereof to the petitioner.

(d) Where a fee is required for a petition to the Commissioner the appropriate section of this part will so indicate. If any required fee does not accompany the petition, the petition will be dismissed.

(e) Oral hearings will not be granted except when considered necessary by the Commissioner.

(f) Except as otherwise provided in these rules, any such petition not filed within 2 months from the action complained of, may be dismissed as untimely. The mere filing of a petition will not stay the period for reply to an Examiner's action which may be running against an application, nor act as a stay of other proceedings.

(g) The Commissioner may delegate to appropriate Patent and Trademark Office officials the determination of petitions.

### 37 CFR 1.182. Questions not specifically provided for.

All situations not specifically provided for in the regulations of this part will be decided in accordance with the merits of each situation by or under the authority of the Commissioner, subject to such other requirements as may be imposed, and such decision will be communicated to the interested parties in writing. Any petition seeking a decision under this section must be accompanied by the petition fee set forth in § 1.17(h).

### 37 CFR 1.183. Suspension of rules.

In an extraordinary situation, when justice requires, any requirement of the regulations in this part which is not a requirement of the statutes may be suspended or waived by the Commissioner or the Commissioner's designee, *sua sponte*, or on petition of the interested party, subject to such other requirements as may be imposed. Any petition under this section must be accompanied by the petition fee set forth in § 1.17(h).

Petitions on appealable matters ordinarily are not entertained. See MPEP § 1201.

The mere filing of a petition will not stay the period for replying to an examiner's action which may be running against an application, nor act as a stay of other proceedings (37 CFR 1.181(f)). For example, if a petition to vacate a final rejection as premature is filed within 2 months from the date of the final rejection, the period for reply to the final rejection is not extended even if the petition is not reached for decision within that period.

However, if the petition is granted and the applicant has filed an otherwise full reply to the rejection *within the period for reply*, the case is not abandoned.

37 CFR 1.181(f) provides that any petition under that rule which is not filed "within 2 months from the action complained of" may be dismissed as untimely. Often, the "action complained of," for example, a requirement for a new drawing, is included in the same letter as an action on the merits of the claims, the latter having a 3-month period for reply.

*See Bill Dixon*